

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

(2)

COD No. 269/2011

LPA No. 173/2011

IA No. 270/2011

Date of decision: 26.07.2012

Habeel Iqbal

v. State of J&K and ors.

R.A.J.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice
Hon'ble Mr. Hasnain Massodi, Judge

Appearing counsel:

For appellant(s) : Ms. Sabina Sagar, Advocate vice
Mr. R. A. Jan, Sr. Advocate.

For respondent(s) Mr. Azhar-ul-Amin, AAG.

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|-----|---|---|-----|
| i) | Whether to be reported in
Press, Journal/Media | : | Yes |
| ii) | Whether to be reported in
Digest/Journal | : | Yes |

Per M. M. Kumar, CJ

COD No. 269/2011

- For the reasons stated in the application, the delay of 66 days in filing the appeal is condoned.

Condonation application stands disposed of.

LPA No. 173/2011

IA No. 270/2011

- The appellant, who is an Advocate of this Court, has challenged judgment and order dated 08.02.2011 passed by

(9)

the learned Single Judge, rejecting his claim that he was entitled to participate in the selection process as he was eligible in accordance with the proviso inserted in the Advertisement Notice dated 30.12.2008. The Public Service Commission had invited applications on the prescribed proforma from the eligible candidates. According to the aforesaid notification, all eligible candidates were required to apply to participate in the Combined Competitive (Preliminary) Examination for direct recruitment in respect of the advertised posts. However, with the object of granting chance to those who did not acquire the graduate qualification (LLB Degree in the present case), the notification incorporated a proviso which permitted the candidates who have appeared in the examination for such Degree from any University, the passing of which later on would render them eligible to appear in the Combined Competitive Examination but the results of their examination had not been declared. However, it was subject to the condition that if such candidates are declared qualified by the Public Service Commission for taking the Combined Competitive (Main) Examination then they were required to produce proof of passing the requisite examination with their application for the Main Examination failing which such candidates were not to be admitted to the Main Examination. It would be necessary to read the proviso incorporated in the

notification which is necessary for appreciating the controversy and the same reads as under:-

"Provided that candidates who have appeared in any examination for such degree from any University the passing of which would render them eligible to appear in the examination but the results of their examination has not been declared, shall be allowed to appear in the preliminary examination. All such candidates who are declared qualified by the Commission for taking the Combined Competitive (Main) Examination will be required to produce proof of passing the requisite examination with their application for the Main Examination failing which such candidates shall not be admitted to the Main Examination."

3. It is conceded fact by the parties that the appellant did not appear for his LL.B degree qualification by the last date of receipt of application. In other words he was not awaiting his result. He applied by 20.03.2009 whereas he took LL.B examination on 29.03.2009. On the basis of the information furnished by the appellant in his application, he was allowed to take Main Examination but it was discovered that he had appeared for final semester of degree of Law from Aligarh Muslim University on 29.03.2009 whereas the last date for filling of the application form to take the Main Examination was 20.03.2009. On the basis of the aforesaid material facts, the learned Single Judge dismissed the writ petition after recording the following finding:-

"During arguments a specific question was put to learned counsel for the petitioner regarding the date when the petitioner appeared in the final semester of LLB examination from Aligarh Muslim University. From the pleadings and submissions of the learned counsels I could find that the petitioner has appeared after the last date viz 29.03.2009 which would show that he does not fall within

the proviso reproduced above which permitted candidates who had appeared in any degree examination and their result had not been declared before the cut off date, to apply for the posts.

Permission on the part of the Commission to sit in the preliminary examination or Mains examination would not make him eligible to take part in the process of selection. To avail benefit of the relaxation provided under the proviso, a candidate must have appeared in examination passing of which would render him eligible to appear in the competitive examination notified by the Commission. Qualification required for the posts notified is graduation. A candidate would get eligibility to apply and sit in the examination only if he possesses the qualification on the cut off date i.e. 20.03.2009. A candidate who was not a graduate on the said date could also apply but only in case he had appeared in the examination passing of which would render him eligible but in this case too he should have appeared before cut off date i.e. 20.03.2009. Thus not only a candidate who was a graduate on the cut off date had eligibility to apply but also a candidate who had appeared in the examination and was awaiting his result.

Since the petitioner was not in possession of the requisite qualification on the cut off date and also did not fall within the proviso as the final semester examination of his degree of law started much after the last date viz 20.03.2009, the Commission has rightly not allowed him to take further part in the selection process as he lacked eligibility on the cut off date.

In these circumstances, I do not find any merit in the present petition which is hereby dismissed.
(Emphasis added)

4. We have heard learned counsel for the parties and are of the view that the instant appeal does not merit admission. According to proviso, the candidates who had appeared in the Degree examination and their result had not been declared alone were eligible to apply for the preliminary examination. However, such candidates were required to qualify for taking the Main Examination. The eligibility of such candidate has to be determined as per the cut off date fixed for filling up the applications which in the present case was 20.03.2009 (see

Rekha Chaturvedi v. University of Rajasthan 1993 Supp (3) SCC 168 and **M. V. Nair (Dr.) v. Union of India** (1993) 2 SCC 429). Thus apart from the candidates who were in possession of the degree from a recognized University, those candidates who had appeared in any degree examination and were awaiting their results before the cut off date were also made eligible to apply for the post. The appellant had wrongly furnished an undertaking in the application form that he was eligible and that he had appeared in the examination. Accordingly, he was permitted to appear in the Mains Examination for which applications were invited by the Commission. He failed to disclose at any point of time that he had not appeared in the examination before the cut off date in his application for preliminary examination which would have made him ineligible for appearing in the Main Examination and even for earning interview call. It was during the verification of his certificates, it was found that he had not in fact appeared in the degree examination before the cut off date and no documentary evidence to that effect could be produced. His certificate indicated that he had appeared in the final semester of degree of Law from Aligarh Muslim University on 29.03.2009. Although he had qualified the degree before the last date for filling of the application forms for the Mains examination to be conducted by the Commission, yet he had

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not appeared in the degree examination before the cut off date of 20.03.2009 fixed for receipt of applications for preliminary examination. It was on account of the discrepancy with regard to his eligibility on the date of his interview that the Commission insisted upon the appellant to produce documentary evidence that he had appeared in the degree examination before the cut off date i.e. 20.03.2009 and his result was awaited. The appellant was thus not allowed to participate in the interview process.

- 5. That being the factual position, the proviso projected in Para 2 would not be available to writ petitioner- appellant and as has been rightly noticed by the learned Single Judge. We are of the considered view that no exception is provided to admit the appeal and the same is hereby dismissed.

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26-7-2012

(Sd/- Honble Mr Justice M.M. Kumar
Chief Justice)
(Sd/- Honble Mr Justice Harshvardhan
Mansadi)

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Dated 18/8 Day of AUGUST 2012
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 OF EVIDENCE ACT.



HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

1. COD 269/2011

Habeel Iqbal Aged about 25 yrs S/o Mohamamd Iqbal R/o
Hergam Taing Mohalla Shopian.

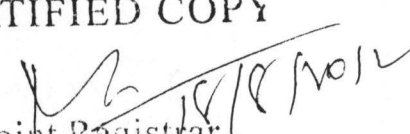
.....applicant/petitioners.

Vs

1. State of J&K through Commr Secty to Govt, General Adm
Deptt, Civil Sectt, Srinagar/ Jammu.
2. J&k Public Service Commission, through its Secty, Polo Ground
Srinagar.
3. Chairman, J&K Public Service Commission, Polo Ground
Srinagar. .

...respdts..

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Joint Registrar
High Court of J&K, Srinagar

Dated 18/8 Day of AUGUST 2012

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OF EVIDENCE ACT.